

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE-DIVISION I

STATE OF TENNESSEE

v.

PERRY A. MARCH

Case No. 99-B-1290

FILED
2005 NOV -4 PM 3:45
DAVID O. JOHNSON CLERK
PCL
DC

**MOTION TO DISMISS FOR
LACK OF SPEEDY TRIAL AND
VIOLATION OF TREv. 48(b)**

Defendant was indicted on 6/4/99; arrested on 8/12/05 and arraigned on 8/17/05. The delay between indictment and arrest/arraignment, six (6) years and one (1) month is excessive and of such prejudice to the Defendant to warrant dismissal of the indictment. The reason for delay may only be viewed as to gain a tactical advantage by the State.

Generally there are four factors to be considered by the trial court in a speedy trial claim” (1) Length of delay, (2) reason for the delay, (3) assertion of the right, (4)prejudice. *Barker v. Wingo*, 407 U.S. 514 (U.S. 1972).

U.S. Supreme Court held that a defendant’s constitutional right to a speedy trial cannot be established by any inflexible rule but can be determined only on and ad hoc balancing basis, in which the conduct of the prosecution and that of the defendant are weighed.

Doggett v. U.S., 505 U.S. 647 (1992): In February 1980, Doggett was indicted on federal drug charges, but he left the country before the Drug Enforcement Agency could secure his arrest. The DEA knew that he was later imprisoned in Panama, but after requesting that he be expelled back

to the United States, never followed up on his status. Once the DEA discovered that he had left Panama for Colombia, it made no further attempt to locate him. Thus, it was unaware that he reentered this country in 1982 and subsequently returned to the US.

The State was aware at the time it brought the case to the Grand Jury that Mr. March had moved to Mexico as is evidenced by his address listed on the capias. Ex. 1

The capias clearly states "forwarded to Hugh Janett MNPD on 6/21/00, a year later. Officer Janett is in the Fugitive Division which is who would institute extradition. The Indictment was sealed, secret; therefore Defendant has no knowledge of its existence.

Proof at the hearing of this cause will indicate the state made no attempt to serve the capias until late 2004 or early 2005.

The Defendant's memory of the events surrounding the alleged theft is impaired by the amount of time which has elapsed. The records which substantiate his defense are no longer available. Absent these records and the Defendant's clear memory, he can have no fair trial and will be severely limited in his defense. The State caused this situation and should not be allowed to benefit from their delay.


Of seven (7) witnesses listed on the Grand Jury subpoena, (Exhibit 2) which was issued on the date of the return of the indictment, 6/4/99, only one witness was sworn, Michael Geraciot, who was a member of Levine, Mattison, Orr and Geraciot. The remaining witnesses were crossed off the subpoena. Had this case proceeded by warrant the state could not have made probable cause on Mr. Geraciot's testimony (hearsay).

There is no reason for the delay except to gain a prosecutorial advantage. The intent of the state is clear when we note that the state requested a Two Hundred Fifty Thousand Dollars

(\$250,000.00) bond on a Class C Felony, (Defendant would have been presumed eligible for probation).

Defendant therefore moves that the indictment be dismissed for want of Speedy Trial.

Respectfully Submitted,



C. Edward Fowlkes, #5988
LAWYER FOWLKES
172 Second Avenue North, Suite 210
Nashville, TN 37201-1908
(615) 726-0770

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Motion was forwarded by U. S. Mail, postage prepaid, **Ben Winters**, Assistant District Attorney General, 222 Second Avenue North, Suite 500, Nashville, TN 37201 on this 4 day of November, 2005.



C. Edward Fowlkes

VS.

Sex/Race M/W DOB 1/14/61 SSN _____

MARCH, Perry A.

WNO

Charge

Complaint #

Date
Received

1. Theft of Property

DIRECT

2. _____

3. _____

Warrant
Dismissal?

4. _____

☐ Yes
☐ No

5. _____

6. _____

Co-Def. _____

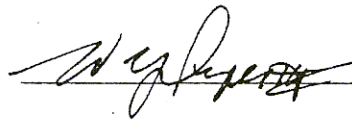
ail ☐ Date:
bond ☐
pen ☐

WITNESSES

1. <u>Michael Geraciotti</u>	<u>210 Third Avenue North, Nashville, TN 37219</u>
2. <u>Peter Rosen</u>	<u>210 Third Avenue North, Nashville, TN 37219</u>
3. <u>John D. Wood</u>	<u>150 4th Avenue North, Nashville, TN 37219</u>
4. <u>William B. Gambill</u>	<u>491 Allied Drive, Nashville, TN 37211</u>
5. <u>Garry E. Zeitlin</u>	<u>5278 McGavocks Road, Nashville</u>
6. <u>Paul Eichel</u>	<u>300 2nd Avenue South, Nashville, TN 37201</u>
7. <u>Elliott Greenberg</u>	<u>1107 Park Ridge Drive, Nashville, TN 37215</u>
8. _____	_____
9. _____	_____
0. _____	_____
1. _____	_____
2. _____	_____
3. _____	_____

To the Sheriff of Davidson County: You are ordered to subpoena the above witnesses to personally appear before the Judge of our Criminal Court, now sitting for the County of Davidson, at the Courthouse in the City of Nashville, INSTANTER, then and there to testify and the truth to say before the Grand Jury in behalf of the State of Tennessee and this you shall in no wise omit, under the penalty prescribed by law.

Witness, Clerk of the Criminal Court, at office the _____ Monday in _____, 19____



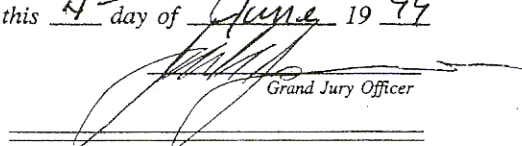
Clerk

STATE OF TENNESSEE
DAVIDSON COUNTY

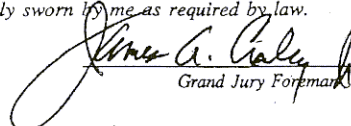
GRAND JURY SUBPOENA

Returned executed in full

this 4th day of June 19 99


Grand Jury Officer

I hereby certify that the above indicated witnesses
were duly sworn by me as required by law.


Grand Jury Foreman

CAPIAS--CRIMINAL COURT.

Defendant's Name: Perry A. March Complaint #: _____

Alias Information: _____

Sex: M Color: W DOB: 1/14/61 Age: 38 Ht.: 5'9" Wt.: 150

Address (Last Known): Jalisco State, Mexico Ph.#: _____

OCA # _____ TN Driver's License # _____ SSN: 310-50-4467

Employer: _____ Ph.#: _____

Next of Kin: _____ Address (Last Known): _____

No Bond <input type="checkbox"/>	No Bond <input type="checkbox"/>
Bond Recommendation \$ <u>250,000</u>	Bond Set as Recommended <input checked="" type="checkbox"/>
By: <u>Michael Mathews</u>	Bond set at \$ _____
Assistant District Attorney General	By: <u>J. Randolph</u>
Michaela Mathews	Judge

Capias issued as result of: Indictment/Presentment ☒ Forfeiture ☐

STATE OF TENNESSEE

To Any Lawful Officer of the State of Tennessee--Greeting:
You are hereby commanded to take the body of Perry A. March

if to be found in your County, and him/her safely keep, so that you have him/her before the Judge of our Criminal Court for the County of Davidson, at the Courthouse in the City of Nashville, instant, then and there to answer the State on an indictment for Theft of Property (710K 460K)

Herein fail not, and have you then and there this Writ.

Witness DAVID C. TORRENCE, Clerk of said Court, at office, the 2nd Monday in April A. D. 1999, and the two hundred and 22nd year of the Independence of the United States.

David C Torrence, Clerk.
By: W. J. [Signature], D. C.

Book _____ Page _____
Amount _____
Bonding Company _____
Date of Bond _____

Officer _____

Came to hand same day and executed by
arresting the defendant and bringing him
before a Judge of the _____
Court this _____ day of _____
19 _____.

Issued _____ day of _____
June, 1999

STATE OF TENNESSEE
V. } Capias
Perry March

No. 9901290

CRIMINAL COURT
DAVIDSON COUNTY
DIV. 1

#259000

6-21-00

(capias returned to
Hank Jewett MNPB)

1

APRIL TERM, 19 99, CRIMINAL COURT

STATE OF TENNESSEE

VS.

NO. 99-B-1290

PERRY A. MARCH

PROSECUTOR: Michael Geraciotti

CHARGE: Theft of Property

Witness(es) before the Grand Jury:

MICHAEL GERACIOTTI

The above witness(es) appeared; was/were duly sworn by me, the foreperson, and gave testimony before the Grand Jury in the above-styled cause this 4th day of June, 19 99.



A TRUE BILL



A NO TRUE BILL

James A. Aubrey Jr.
Foreperson
Davidson County Grand Jury

SUBPOENA THE FOLLOWING WITNESSES FOR THE STATE OF TENNESSEE:
COMPLAINT No(s):

Michael Geraciotti, 210 Third Avenue North, Nashville, TN 37219
Peter Rosen, 210 Third Avenue North, Nashville, TN 37219
John D. Wood, 150 4th Avenue North, Nashville, TN 37219
William B. Gambill, 491 Allied Drive, Nashville, TN 37211
Garry E. Zeitlin, 5278 McGavocks Road, Nashville
Paul Eichel, 300 2nd Avenue South, Nashville, TN 37201
Elliott Greenberg, 1107 Park Ridge Drive, Nashville, TN 37215

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Edgar
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